

ANNUAL REPORT
PANEL OF MEDIATORS
Fiscal Year 2003

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (1988).

The number of new mediation requests received this fiscal year was significantly higher than that for the preceding year; there were 64 new requests compared with 54 in FY 2002 and 61 in FY 2001. During the last fifteen years, the number of new filings per year ranged from the low of 54 to a high of 115 filings in FY 1990 and 1993. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 82.8 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 23 matters carried over from FY 2002 that required some form of mediation activity during the year. Last year, 23 matters were carried over from FY 2001. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 86, again up significantly from 77 during the previous fiscal year. Demand for the Panel's services was essentially unaffected by the introduction of user fees during FY 1992. In the uncertain economy of the early 90's, most parties negotiated only one-year agreements, hoping that the situation would stabilize or improve sufficiently the next year to permit more productive negotiations at that time. Beginning about the middle of calendar year 1994, parties began returning to the practice of negotiating multi-year agreements, thereby reducing the number of agreements which expired this year. The increase in demand this year reflects significant factors affecting the bargaining process--a significant shortfall in State revenue, several high-profile plant closures in the private sector, the availability of fewer resources from which to fund settlements and significant increases in health insurance premiums. As predicted in last year's report, the combination of these factors has resulted in increased demand for mediation services.

Mediation is recorded as a single request, even though it may involve multiple bargaining units of a single employer. For example, one filing this year was for 7 units, another was for 5, one was for 4, and 3 were for 2 units each. In such situations, the mediator undoubtedly expends substantial periods of time on issues particular to individual bargaining units, making the mediation process a long and complicated one.

Thus, the number of mediation requests filed is not a completely accurate reflection of the Panel's actual workload.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1989	78%
1990	79%
1991	78%
1992	74%
1993	68.5%
1994	75.2%
1995	50%
1996	66.2%
1997	82.1%
1998	82.3%
1999	73.91%
2000	80.7%
2001	85.94%
2002	76%
2003	83.1%

The Panel's settlement rate increased somewhat this year. Anecdotal evidence from Panel members indicates that a major factor that had a negative impact on settlement rates was the continued dramatic increase in health insurance premiums. Prior to FY 2000, health insurance costs had remained relatively stable for the preceding few years due to efficiencies and economies realized through the introduction of managed care systems (HMO's, PPO's, etc.); however, premiums began rising dramatically in the last quarter of FY 2000 and have continued to increase at a double-digit annual percentage rate since then. Any discussion of wage settlements reached this year must include consideration of the amounts paid by employees toward the cost of health insurance. When employee insurance premium contributions are considered, public employees whose contracts were negotiated this year received an average net wage increase of 2%.

Over the past several bargaining cycles, the most difficult issues in Maine public sector negotiations were those with fiscal impact, especially wages and health insurance

financing. In addition to these issues, bargaining involving teachers in K-12 education also involved language issues, especially those concerning the nature and scope of the educational policy exception from the duty to bargain and the impact of educational policy changes on working conditions.

A unique aspect of the Panel's statutory jurisdiction is its role under the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. §1953, et seq. (1981 and Supp. 2001). That Act provides that qualified associations of producers of agricultural products and processors who purchase their crop must negotiate in good faith over the price and terms of sale for commodities produced or sold. If the parties are unable to reach agreement through direct negotiations, the Act specifies that the Panel will provide voluntary and/or compulsory services to the parties within a strict time schedule designed to ensure that a contract for the sale of commodities will be in place prior to the beginning of the growing season for that commodity. This year, the negotiations between the Agricultural Bargaining Council, representing the producers of approximately one-half of the Maine potato crop, and McCain Foods had not resulted in a successor agreement 30 days prior to expiration of the existing contract; therefore, the matter was ripe for mandatory mediation. A member of the Panel met with the parties over a period of three days. While settlement was not reached in mediation, considerable progress was made between the parties toward settlement. Final agreement was reached prior to arbitration.

In late FY 1995, members of the Panel of Mediators received instruction by the U.S. Department of Labor in interest-based bargaining techniques. Starting that year, State mediators have offered non-confrontational bargaining services to the public sector labor-management community upon the joint request of the parties. In the 55 instances where this problem-solving "preventive mediation" approach was used, 53 settlements resulted (96.3% settlement rate). For the first time since the program was introduced, we received no requests for preventive mediation services. This is another indication of the change of atmosphere at the bargaining table and the increased difficulty negotiating collective bargaining agreements in the current economy.

Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The settlement rate only includes matters where

the mediator was actively involved in the settlement. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last several years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals	Private Sector Referrals	Agricultural Marketing Act
1989	107	5	100	0	2
1990	115	6	106	1	2
1991	89	1	86	2	0
1992	94	3	90	1	0
1993	115	4	109	0	2
1994	114	4	109	0	1
1995	77	9	67	0	1
1996	69	5	64	0	0
1997	74	12	60	2	0
1998	68	2	66	0	0
1999	69	3	66	0	0
2000	73	6	67	0	0
2001	61	6	55	0	0
2002	54	3	50	0	1
2003	64	8	55	0	1

The 64 requests for services received this year involved the following employee organizations:

Maine Education Association/NEA ¹	37 requests
Teamsters Union Local 340	14
International Association of Firefighters	4
Maine State Employees Association	3
AFSCME Council 93	3
International Association of Machinists	1
Lewiston Deputy Fire Chiefs Association	1

Agricultural Bargaining Council	1

The number of requests involving the Maine Education Association decreased this year from 40 to 37 requests (a 7.5% decrease), while the total number of mediation requests increased 18.5% and requests involving the other employee organizations increased 100% this year. The other employee organizations are primarily involved in the municipal sector. As noted above, school sector negotiations are increasingly concerned with language issues--particularly whether existing or proposed agreement provisions are matters of educational policy. Non-school negotiations continue to focus primarily on economic issues and such issues have proven to be much more difficult to resolve this year, with or without the involvement of mediation.

The average number of mediation-days per case decreased slightly from 3.86 in FY 2002 to 3.46 for the combined total of 65 matters, including carryovers, for which mediation was concluded. The maximum mediation days devoted to a single case this fiscal year was 24. Of the 65 cases in which mediation was concluded this year, 58.3% were resolved in 3 days or less (4 cases were resolved in one day, 13 were resolved in two days and 18 were resolved in three days). The mediation-days per case for all mediations completed this year was 3.46 days, with traditional mediations averaging 3.14 days per case.

¹While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case
1989	2.23
1990	2.52
1991	2.67
1992	2.75
1993	2.40
1994	2.51
1995	3.33
1996	3.20 (3.20)
1997	3.76 (3.25)
1998	2.84 (2.27)
1999	3.46 (3.47)
2000	4.19 (4.02)
2001	3.89 (3.60)
2002	3.86 (3.60)
2003	3.46 (3.14)

In order to assist in comparing the number of mediation-days per case over a multi-year period, we have included the number of mediation-days per case in traditional mediations within parentheses in the above table for the last 8 years (years during which preventive mediation services were provided). Although such services were also provided in 1995, only 2 preventive cases were concluded that year and we were unable to break out separate meaningful statistics for traditional and preventive cases for that year.

Of the mediations, including carryovers, that were concluded in FY 2003, 13.8% proceeded to fact finding. The percentage of cases proceeding to requests for fact finding after mediation in each of the past several years is indicated in the following chart:²

²In past years, all post-mediation fact-finding requests were included, whether later dismissed, withdrawn or settled prior to hearing. This was somewhat inaccurate because the mediator continues to work with the parties after the fact-finding request is filed and, in many instances,

Fiscal Year	Percentage of Cases Proceeding to Fact Finding
1989	21.5%
1990	20.73%
1991	28.81%
1992	23.8%
1993	23%
1994	23.6%
1995	25.8%
1996	30.99%
1997	15.94%
1998	14.71%
1999	30.43%
2000	14.04%
2001	9.375%
2002	20%
2003	13.8% (38.5%)

Assuming the average of 3.14 mediation-days per case, the 30 matters still pending will consume an additional 95 mediation-days, for a total expenditure of approximately 320 mediation-days devoted to matters docketed in or carried over to FY 2003.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano	Biddeford
Osip Bukharin	Gorham
David Bustin	Hallowell
James Carignan	Lewiston
Jack Hunt	Kennebunk
James Mackie	South Portland
John J. Mahon	Camden
Sheila Mayberry	Cape Elizabeth
Charles A. Morrison	Auburn
Richard Taylor	Scarborough
Don Ziegenbein	Bangor

settlement is achieved in mediation before the fact-finding proceeding is held. We have included the former calculation in parentheses in the chart for comparison purposes with prior years.

One measure enacted by the Legislature this year has an impact on mediation services offered pursuant to the Maine Agricultural Marketing and Bargaining Act. Under the Law, required mediation was to last for no more than 3 days for annual crops and the days need not have been consecutive. The portion of the bill affecting mediation provided that the 3 days be consecutive business days. This change addressed a situation that arose in the 2002 negotiations between the Agricultural Bargaining Council and McCain Foods, during which the assigned mediator recessed the process while he was away on a previously scheduled vacation. This year, the executive director made sure that the assigned mediator understood the strict time requirements of the process and the required mediation took place on 3 consecutive days. The bill merely codified a change that had already been implemented administratively and the executive director offered informational testimony regarding the measure to the Legislative Agriculture, Conservation and Forestry Committee. Subsequent to a compromise by the interested parties on an unrelated provision, the bill was voted out of committee unanimously "ought to pass as amended" and it was enacted by the Legislature and signed by Governor Baldacci (Ch. 329 of the Pub. Laws of 2003).

The executive director presented testimony neither in favor of nor in opposition to another bill considered in this year's Legislative Session--An Act to Enact the Uniform Mediation Act, L.D. 1295. Although the comments attached to the bill indicated the drafter's intent that it not cover collective bargaining, it would, nevertheless, have had an impact on the MLRB. As a matter of statutory design and fiscal economy, the Executive Director of the Maine Labor Relations Board is responsible for coordinating the full spectrum of state services available to support the public sector collective bargaining process. In addition to managing the representation and prohibited practice jurisdiction of the MLRB, the executive director also coordinates the work of the State mediators and administers the State Board of Arbitration and Conciliation. In testimony before the Joint Standing Committee on Judiciary, the executive director outlined the types of mediation exempted from the scope of the bill and noted how the bill would impact the process for resolving prohibited practice complaints. The Committee voted to carry over the bill for further consideration in the Second Regular Session.

Continuing an initiative begun two years ago, the Panel, together with the MLRB and the State Board of Arbitration and Conciliation, sponsored a program presented by Professor H. Cabanne Howard of the University of Maine School of Law on the topic of

ethics in labor relations. This seminar attracted 30 practitioners and was held on December 6, 2002, at the Portland office of the Department of Human Services. The Board of Overseers of the Bar awarded Maine attorneys continuing legal education credit for attending and participating in this program. These seminars have been particularly well received by labor relations practitioners because relevant continuing education opportunities are non-existent in Maine and the sessions foster informal interaction among practitioners and agency neutrals, away from the heat of a particular dispute or bargaining situation.

The mediation process continues to be the cornerstone of the dispute resolution process in Maine. Practitioners in the public sector labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.

Dated at Augusta, Maine, this 1st day of July, 2003.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Panel of Mediators and
Maine Labor Relations Board